

had been substituted in part for the article, to wit, a syrup containing sugar, commercial glucose, and artificial coloring matter. Misbranding was alleged for the reason that the statement "Cordial Non-Alcoholic Rock & Rey," borne on the label, was false and misleading in that said label purported that the product was composed of rock and rye, which is a mixture of rock candy and rye whisky, whereas, in truth and in fact, it was not a mixture of rock candy and rye whisky, but was a syrup containing sugar, commercial glucose, and artificial coloring matter, and said label did not set forth all the ingredients and substances in said product and failed to set forth that the product did contain another substance and substances, to wit, sugar, commercial glucose, and artificial coloring matter. Misbranding was alleged for the further reason that the statement "Cordial Non-Alcoholic Rock & Rey," borne on the label, was false and misleading in that it represented that the product was a cordial, whereas, in truth and in fact, it was not a cordial, but was a syrup containing sugar, commercial glucose, and artificial coloring matter. Misbranding was alleged for the further reason that the statement borne on the label thereof, to wit, "Cordial Non-Alcoholic Rock & Rey," deceived and misled the purchaser into the belief that the product was cordial, containing rock and rye, a mixture of rock candy and rye whisky, whereas, in truth and in fact, it was not a cordial containing rock and rye or a mixture of rock candy and rye whisky, but consisted of a syrup containing sugar, commercial glucose, and artificial coloring matter.

On February 20, 1913, the defendant filed his demurrer to the information and on May 9, 1913, the court sustained the demurrer, as will more fully appear from the following memorandum decision by the court:

VEEDER, *Judge*. This is a demurrer to an information under the Food and Drugs Act. The article of food in question was labeled by the defendant "Cordial Non-Alcoholic Rock & Rey." It is alleged that it was in fact a syrup containing sugar, commercial glucose and artificial coloring matter. The supporting affidavit shows that it contained, in addition, prune juice.

The information charges the defendant, in one count, with adulteration, and in three other counts with misbranding.

With respect to adulteration the allegation is that the defendant's food product contained substances—that is, sugar, commercial glucose, and artificial coloring matter—"which had been substituted in part for the said article." But the ingredients of the "said article" which is thus alleged to have been debased by an admixture of the substances mentioned are not alleged, and they are certainly not within common knowledge. Adulteration is a relative term, and unless the relation is disclosed no offense is set up.

The second, third and fourth counts charge misbranding: that the label was false and misleading in representing the article to be (a) a compound of rock candy and rye whiskey, (b) a cordial, (c) a cordial containing rock candy and rye whiskey; whereas it was syrup containing sugar, commercial glucose and artificial coloring matter.

The designation "Cordial Non-Alcoholic Rock & Rey" is an arbitrary and fanciful one, calculated at once to put a purchaser upon inquiry as to the ingredients. But the word non-alcoholic clearly indicates that the product does not contain whiskey and that it is not a cordial, the essential ingredient of which is alcohol. Since the act does not require that the ingredients of such a product shall be stated, I am of the opinion that the information fails to set up a case of misbranding.

The demurrer is sustained.

B. T. GALLOWAY, *Acting Secretary of Agriculture*

WASHINGTON, D. C., February 4, 1914.

2845. Adulteration and misbranding of lemon and vanillin flavors. U. S. v. National Chemical Co. Plea of guilty. Fine, \$20 and costs. (F. & D. No. 3909. I. S. Nos. 14689-d, 14690-d.)

On October 15, 1912, the United States Attorney for the Southern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the National Chemical Co., a corporation, Burlington, Iowa, alleging shipment by said company, in violation of the Food and Drugs Act, on November 21, 1911, from the State of Iowa into the State of Illinois, of quantities of lemon flavor and vanillin flavor which were adulterated

and misbranded. The lemon flavor was labeled: (On bottle) "Dr. Miller's Terpeneless flavoring of Lemon Artificial Colored. Prepared only by The National Chemical Co. Burlington, Iowa."

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results:

Specific gravity.....	0.9602
Alcohol (per cent by volume).....	43.5
Methyl alcohol.....	Absent
Glycerol.....	Present
Solids (grams per 100 cc).....	6.75
Lemon oil by precipitation.....	Absent
Total aldehydes (per cent by weight).....	0.12
Citral (per cent by weight).....	0.10
Color	Naphthol Yellow S

Adulteration of this product was alleged in the information for the reason that a substance, to wit, a dilute terpeneless lemon flavor, had been mixed and packed with it in such a manner as to reduce and lower and injuriously affect its quality and strength. Adulteration was alleged for the further reason that a substance, to wit, a dilute terpeneless lemon flavor had been substituted wholly or in part for the genuine article, lemon flavor, and for the further reason that the product had been colored in a manner whereby inferiority was concealed. Misbranding was alleged for the reason that the product was labeled "Terpeneless Flavoring of Lemon," which statement was false and misleading, as the analysis showed it to consist of a dilute terpeneless lemon flavor, artificially colored, or approximately one-half standard strength. Misbranding was alleged for the further reason that the statement, "Terpeneless Flavoring of Lemon," borne on the label, misled or deceived the purchaser into the belief that the product was terpeneless flavoring of lemon, whereas analysis showed that it consisted of a dilute terpeneless lemon flavor, artificially colored and of approximately one-half standard strength.

The flavoring of vanillin was labeled: "Dr. Miller's Compound Flavoring of Vanillin. Price 10 cents. Guaranty Legend, Serial No. 8276. Prepared by National Chemical Company, Incorporated, Burlington, Iowa."

Analysis of a sample of this product by said Bureau of Chemistry showed the following results:

Vanillin (per cent).....	0.68
Vanillin, melting point.....	79.5°C.
Coumarin (per cent).....	0.16
Coumarin, Leach test.....	Positive
Coumarin, alcoholic potash test.....	Positive
Coumarin, melting point.....	67.0°C.
Resins.....	None
Lead number.....	0.06
Color value of extract:	
Red.....	15.0
Yellow.....	45.0
Color value of lead filtrate:	
Red.....	10.0
Yellow.....	30.6
Per cent of original color in lead filtrate:	
Red.....	67.0
Yellow.....	68.0
Ratio, red to yellow, extract.....	1:3.0
Ratio, red to yellow, lead filtrate.....	1:3.0
Colors, A vegetable red, an oil-soluble green, and Naphthol Yellow S.	

Adulteration of the product was alleged in the information for the reason that a substance, to wit, a compound of vanillin and coumarin, artificially colored, had been substituted wholly or in part for the genuine article, a compound flavoring of vanillin. Adulteration was alleged for the further reason that the product was colored in a manner whereby inferiority was concealed. Misbranding was alleged for the reason that the product was labeled "Compound Flavoring of Vanillin," which statement was false and misleading, as analysis showed it to consist of a compound of vanillin and coumarin artificially colored. Misbranding was alleged for the further reason that the statement "Compound Flavoring of Vanillin," borne on the label, misled and deceived the purchaser into the belief that the product was a compound flavoring of vanillin, whereas analysis showed that it consisted of a compound of vanillin and coumarin, artificially colored.

On November 10, 1913, the defendant company entered its plea of guilty to the information and the court imposed a fine of \$20 and costs.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *February 4, 1914.*

2846. Misbranding of substitute for coffee. U. S. v. A. Zverina. Plea of guilty. Fine, \$35 and costs. (F. & D. No. 3915. I. S. No. 14856-c.)

On November 15, 1912, the United States Attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against A. Zverina, Cleveland, Ohio, alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about December 9, 1910, from the State of Ohio into the State of New York, of a quantity of so-called "Essence for Coffee," which was misbranded. The product was labeled: "Finest essence for Coffee 'Simon Fischer,' Pittsburgh, Pa. General Distributors. Prepared from Wholesome Cereals and Caramel. * * *."

Microscopical examination of a sample of the product by the Bureau of Chemistry of this Department showed water; and that the insoluble part was largely composed of rye and corn with some chicory or dandelion and a small amount of ground prune stones. Misbranding of the product was alleged in the information for the reason that the statement "Prepared from wholesome cereals and caramel," borne on the label, was false and misleading because, as a matter of fact, the product was not composed of cereals and caramel, but contained in addition thereto ground roasted prune pits and chicory. Misbranding was alleged for the further reason that the product was so labeled as to mislead and deceive the purchaser, being labeled and branded "Prepared from Wholesome Cereals and Caramel," whereas, in truth and in fact, the product was not prepared wholly from cereals and caramel, as represented by the label, but contained in addition thereto chicory and ground roasted prune pits.

On November 19, 1912, the defendant entered a plea of guilty to the information and the court imposed a fine of \$25 and costs.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *February 4, 1914.*

2847. Adulteration and misbranding of cattle feed. U. S. v. Imperial Grain & Milling Co. (Inc.). Plea of nolo contendere. Fine, \$25 and costs. (F. & D. No. 3917. I. S. No. 12593-c.)

On November 23, 1912, the United States Attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Imperial Grain & Milling Company, a corporation, Toledo, Ohio, alleging shipment by said company, in violation of the Food and Drugs Act, on or about April 10, 1911, from the State of Ohio into the State of Rhode Island, of a quantity of cattle feed which was adulterated and misbranded. The product was labeled: (On bag) "100 Lbs., (Imperial) Corn, Oats & Barley Chop, Manufactured by the Imperial Grain & Milling Co., Toledo,